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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

BERNADINE GRIFFITH;  
PATRICIA SHIH; RHONDA  
IRVIN; MATTHEW RAUCH;  
JACOB WATTERS, individually  
and on behalf of all others similarly  
situated,

Plaintiffs,

vs.

TIKTOK, INC., a corporation;  
BYTEDANCE, INC., a corporation  
Defendants.

Case No. 5:23-cv-00964-SB-E

**DISCOVERY MATTER**

**JOINT STIPULATION REGARDING  
PLAINTIFFS' MOTION TO COMPEL  
DISCOVERY REGARDING THE  
DATA COLLECTED ON NON-  
TIKTOK USERS AND CHANGES  
MADE TO THE TIKTOK SDK**

Magistrate Judge: Hon. Charles Eick  
Date/Time: Dec. 8, 2023 at 9:30 AM  
Place: Courtroom 750  
255 East Temple St., Los Angeles, CA  
90012

Discovery Cutoff Date: 5/10/24  
Pretrial Conference Date: 9/13/24  
Trial Date: 9/30/24

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## I. PLAINTIFFS' PRELIMINARY STATEMENT

This case involves Defendants TikTok, Inc.'s and ByteDance, Inc.'s deployment of the TikTok Pixel and TikTok Events API (together, "TikTok SDK") on at least *half a million non-TikTok websites* to intercept and collect the personal data of millions of Americans, including those who have never had a TikTok account and had no reason to believe that Defendants would intercept their data. The putative classes and subclasses involve all natural persons in the United States (or California for the subclass) who visited any of these hundreds of thousands of non-TikTok websites and who have no TikTok accounts or registration. Dkt. 63, at ¶ 147.

In a case about Defendants' collection of data on non-TikTok users through the TikTok SDK, it shouldn't be controversial that Defendants must prioritize producing the very data that they have collected, as well as documents explaining the changes that they have made to the TikTok SDK and to their data-collection practices over time. Notwithstanding the undisputable relevance of the documents sought in this motion and the significant compromises that Plaintiffs have made to alleviate Defendants' stated burden objections, Defendants have sometimes refused and sometimes dragged their heels in producing the documents. The failure to produce with regard to the actual data collected on non-TikTok users is especially troubling because Defendants have also stated that, in clear violation of their duty to preserve relevant discovery, they continue to purge the data regularly (with the last stated interval being approximately every 14 days).

All three categories of documents sought in this motion are relevant to Plaintiffs' claims in this case, including with regard to class certification, and have been narrowly tailored to account for Defendants' complaints of burden. *First*, Plaintiffs seek a sample of the data that Defendants have collected on non-TikTok users through the TikTok SDK, as well as documents identifying the fields and subfields of data that Defendants collect on non-TikTok users through the TikTok SDK. In order to address Defendants' concerns about the "immense amount of data"

1 that they collect on non-TikTok users (their own words constitute an admission on  
2 the alarming amount of data that Defendants are collecting through the TikTok SDK),  
3 Plaintiffs asked that Defendants produce such data from just *a single day* on which  
4 Defendants collect, generate, and process such data. After expressly agreeing that  
5 they would do so by September 29, Defendants still have not done so. At the same  
6 time, Plaintiffs have learned that despite their obligation not to destroy relevant  
7 evidence, after Defendants collect and use non-TikTok user data, Defendants  
8 continue to “delete” the relevant data that they collect on non-TikTok users.  
9 Defendants’ conduct—simultaneously *withholding* the production of the best  
10 potential evidence to identify potential class members and what exact information  
11 Defendants collect on class members, and *destroying* that data before Plaintiffs have  
12 had a chance to review it—raises serious concerns and requires the Court’s timely  
13 intervention.

14 Second, Plaintiffs seek documents identifying the changes made to  
15 Defendants’ data-collection practices via the TikTok SDK. As alleged in the First  
16 Amended Complaint (“FAC”), Plaintiffs have identified through public investigation  
17 that Defendants not only have made changes to the TikTok Pixel over time but also  
18 have made it *more invasive* of private data by reducing the non-TikTok websites’  
19 control over the baseline amount of data that the Pixel collects even before such  
20 websites make their own configurations to the Pixel. Defendants acknowledge the  
21 relevance of the documents sought but seek to fulfill their discovery obligations by  
22 pointing to three publicly available webpages. For the reasons discussed in this  
23 motion, these three webpages are incomplete and deficient, and Defendants must  
24 search for responsive internal documents and produce them immediately.

25 Third, Plaintiffs seek documents identifying the historical settings of the Pixel  
26 that is or was installed on the websites expressly referenced in the FAC. These  
27 documents are also relevant for Plaintiffs to investigate the changes made over time  
28 to the TikTok Pixel and the data that Defendants collect on non-TikTok users through

1 that Pixel. In response to Defendants' complaints about the burden associated with  
2 producing this information, Plaintiffs as an initial matter seek only the historical Pixel  
3 settings for the 18 non-TikTok websites identified in the FAC, while reserving their  
4 rights to seek settings for additional websites after reviewing the initial set. In fact,  
5 this compromise is consistent with a suggestion that Defendants themselves made  
6 during an October 23 conference between the parties. Defendants have failed to abide  
7 by their own suggestion to start the production of this set of documents with the non-  
8 TikTok websites identified in the FAC.

9 In light of Plaintiffs' deadline to move for class certification in approximately  
10 three months,<sup>1</sup> Plaintiffs further request that the Court order Defendants to produce  
11 the documents within one week of the disposition of this motion.

## 12 **II. DEFENDANTS' PRELIMINARY STATEMENT**

13 Plaintiffs purport to move to compel under 11 document requests but really  
14 seek only three categories of documents. All three of those categories concern  
15 documents that they did not request. Plaintiffs try to distort the plain meaning of  
16 their requests, and the history of the meet-and-confer process, to cover these  
17 categories, but that attempt should be rejected.

18 First, Plaintiffs ask the Court to compel the production of a snapshot of non-  
19 TikTok user data that TikTok receives. They identify nine document requests, but  
20 the data is not responsive to any of them. Seven seek documents concerning the  
21 process of how TikTok collects data, not the underlying data itself. The remaining  
22 two ask for documents that can be used to identify putative class members and their  
23 data. But the data Plaintiffs seek is not responsive because it cannot be used to  
24 identify any specific person. It cannot even be used to determine the size of the class,  
25 because the data belonging to non-users is indistinguishable from data that simply  
26 does not include enough information to match to the correct TikTok user.  
27 Furthermore, this data is not stored in an obviously accessible way precisely because

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28 <sup>1</sup> Pursuant to Local Rule 37-2, a copy of the Case Management Order in this case is  
attached as Exhibit 1.



1 TikTok does not use the data in the manner Plaintiffs allege. In any event,  
2 Defendants have agreed to produce the snapshot that Plaintiffs say they need, pending  
3 creation of a query to target the right information and approval to access data pursuant  
4 to TikTok's data access practices (which are uniquely restrictive in accordance with  
5 the company's ongoing national security discussions).

6 Second, Plaintiffs want documents regarding changes to the tools at issue.  
7 Defendants produced the most relevant documents on that topic, which happen to be  
8 publicly available. The request does not require the production of non-public  
9 documents, and Plaintiffs agreed during the meet-and-confer process that this  
10 category could be satisfied by "go-get" documents (and TikTok has never agreed to  
11 produce "all" such documents). And just like the first category, Defendants have  
12 agreed to produce, and have produced, internal documents in light of Plaintiff's  
13 continued demands. Moreover, the parties are in the process of negotiating a  
14 custodial search that covers more than 25 custodians. Should that search uncover  
15 additional responsive documents, Defendants will produce them.

16 Third, Plaintiffs move to compel on documents showing the historical changes  
17 18 websites made to their Pixel settings. They point to a single document request,  
18 which seeks documents about websites' efforts to "limit" the collection of data by  
19 the TikTok Pixel. The historical Pixel settings for a website demonstrate that  
20 website's use of the Pixel, not an "attempt to limit" its functioning. The request also  
21 makes no sense because the websites control both installation and configuration of  
22 the Pixel. Thus, if they wanted to limit the Pixel's reach, they would just uninstall it  
23 or reconfigure it. And in any event, documents about a particular website's efforts  
24 to limit the data collection are not documents that TikTok would have—if anything,  
25 the websites would have them. Recognizing that their request does not cover Pixel  
26 settings, Plaintiffs have now propounded a request for that exact category of  
27 documents. That request was not served, however, until October 31, and TikTok's  
28 response is not due until November 30. Plaintiffs' attempt to short-circuit TikTok's



1 time to respond by deeming these documents part of a prior, but completely  
2 irrelevant, request should be rejected.

3 Under these circumstances, a motion to compel is frivolous. Plaintiffs ask this  
4 court to punish TikTok for its attempts to cooperate with Plaintiffs and go beyond  
5 what their requests seek. That demand should be rejected. TikTok remains willing  
6 to cooperate on these and other requests, but its efforts to identify the relevant  
7 information that Plaintiffs demand, including outside the context of proper requests,  
8 require adequate time.

### 9 **III. LEGAL STANDARD**

#### 10 **A. PLAINTIFF’S STATEMENT**

11 A motion to compel is ripe when a party has failed to respond adequately to a  
12 discovery request. Fed. R. Civ. P. 37(a)(3). “Parties may obtain discovery regarding  
13 any nonprivileged matter that is relevant to any party’s claim or defense and  
14 proportional to the needs of the case, considering the importance of the issues at stake  
15 in the action, the amount in controversy, the parties’ relative access to relevant  
16 information, the parties’ resources, the importance of the discovery in resolving the  
17 issues, and whether the burden or expense of the proposed discovery outweighs its  
18 likely benefit.” Fed. R. Civ. P. 26(b)(1). “[W]ide access to relevant facts serves the  
19 integrity and fairness of the judicial process by promoting the search for the truth.”  
20 *Epstein v. MCA, Inc.*, 54 F.3d 1422, 1423 (9th Cir. 1995) (citation omitted).

#### 21 **B. DEFENDANTS’ STATEMENT**

22 A motion to compel must be denied as moot when the responding party has  
23 already produced the documents at issue. *See, e.g., Burmayan v. Garfield Beach*  
24 *CVS, LLC*, No. CV 23-01788-FMO (AGRx), 2023 WL 6783288, at \*3 (C.D. Cal.  
25 Aug. 28, 2023) (motion to compel moot where defendant “indicate[d] that it ha[d]  
26 completed production” on RFPs at issue); *Mass. Mut. Life Ins. Co v. Reingold*, No.  
27 2:19-cv-5428-GW (SKx), 2020 WL 12016704, at \*1 (C.D. Cal. Jan. 31, 2020)

(motion to compel moot “insofar as Defendant has produced non-privileged responsive documents already”).

Conversely, the motion must be denied as premature when the time to respond to the request under the Federal Rules has not passed. *See, e.g., Garcés v. Pickett*, No. 2:17-cv-0319 JAM AC P, 2021 WL 978540, at \*1 (E.D. Cal. Mar. 16, 2021) (“Because the time to respond to the first request for production had been extended and the time for responding to interrogatories had not yet passed, the motion was denied as premature.”). The responding party has 30 days to respond to a request for production. Fed. R. Civ. P. 34(b)(2)(A).

As Plaintiffs admit, discovery sought must be “relevant” to a “claim or defense,” as well as “proportional to the needs of the case[.]” Fed. R. Civ. P. 26(b)(1).

#### **IV. SAMPLE DATA THAT DEFENDANTS COLLECT—AND DELETE—ON NON-TIKTOK USERS (RFP NOS. 2, 7, 8, 10, 11, 13, 20, 21, 25)**

##### **A. DOCUMENT REQUESTS AND RESPONSES IN DISPUTE**

**REQUEST NO. 2:** DOCUMENTS CONCERNING the operation of the TIKTOK SDK, including but not limited to, DOCUMENTS sufficient to explain (a) the HASHING of any information transmitted through the TIKTOK SDK, (b) the process of how any HASHED information transmitted through the TIKTOK SDK can be DE-HASHED by TikTok, (c) each FIELD and category of information transmitted through the TIKTOK SDK, and (d) how the TIKTOK SDK interfaces with any FIRST PARTY COOKIES or THIRD PARTY COOKIES.

**RESPONSE TO REQUEST NO 2:** TikTok objects to the Request to the extent the documents sought contain Confidential Information, Privileged Information, or Private Information. TikTok objects to the Request because the phrases “operation of the TIKTOK SDK” and “interfaces with” are vague. TikTok objects to the Request because the information sought by (c) (“each FIELD and category of information transmitted through the TIKTOK SDK”) is unduly burdensome as it is without reference to the customizable fields and categories that website owners utilizing the Pixel or Events API can set up, and thus it is not possible for TikTok to provide each

1 field and category of the information transmitted. TikTok objects to the Request as  
2 overly broad and unduly burdensome because there is no defined temporal scope and  
3 thus seeks discovery that is not relevant to any claims or defenses in this action and  
4 proportional to the needs of the case.

5 Subject to and without waiving any of the foregoing General and Specific  
6 Objections, TikTok will produce non-privileged documents concerning the operation  
7 of the Pixel and Events API.

8 **REQUEST NO. 7:** ALL DOCUMENTS CONCERNING YOUR collection of  
9 DATA from FIRST PARTY COOKIES that originate from THIRD PARTY  
10 WEBSITES that use the TIKTOK SDK.

11 **RESPONSE TO REQUEST NO. 7:** TikTok objects to the Request to the extent the  
12 documents sought contain Confidential Information, Privileged Information, or  
13 Private Information. TikTok objects to the Request because the phrase “originate  
14 from” is unclear; TikTok will construe the phrase to mean “are stored by.” TikTok  
15 objects to the Request as overly broad and unduly burdensome because there is no  
16 defined temporal scope and thus seeks discovery that is not relevant to any claims or  
17 defenses in this action and proportional to the needs of the case. TikTok objects to  
18 the Request as overly broad and unduly burdensome because it seeks “ALL  
19 DOCUMENTS . . .” and thus seeks discovery that is not relevant to any claims or  
20 defenses in the case or proportional to the needs of the case. TikTok objects to the  
21 Request to the extent it seeks information regarding TikTok user data, as this action  
22 is limited to non-TikTok users.

23 Subject to and without waiving any of the foregoing General and Specific  
24 Objections, TikTok will produce any non-privileged responsive documents.

25 **REQUEST NO. 8:** ALL DOCUMENTS CONCERNING YOUR collection of  
26 DATA from THIRD PARTY COOKIES that originate from THIRD PARTY  
27 WEBSITES that use the TIKTOK SDK.

28

1 **RESPONSE TO REQUEST NO. 8:** TikTok objects to the Request to the extent the  
2 documents sought contain Confidential Information, Privileged Information, or  
3 Private Information. TikTok objects to the Request because the phrase “originate  
4 from” is unclear; TikTok will construe the phrase to mean “are stored by.” TikTok  
5 objects to the Request as overly broad and unduly burdensome because there is no  
6 defined temporal scope and thus seeks discovery that is not relevant to any claims or  
7 defenses in this action and proportional to the needs of the case. TikTok objects to  
8 the Request as overly broad and unduly burdensome because it seeks “ALL  
9 DOCUMENTS . . .” and thus seeks discovery that is not relevant to any claims or  
10 defenses in the case or proportional to the needs of the case. TikTok objects to the  
11 Request to the extent it seeks information regarding TikTok user data, as this action  
12 is limited to non-TikTok users.

13 Subject to and without waiving any of the foregoing General and Specific  
14 Objections, TikTok will produce any non-privileged responsive documents.

15 **REQUEST NO. 10:** ALL DOCUMENTS CONCERNING YOUR collection of  
16 PLAINTIFFS’ DATA collected through the “TikTok for Business” suite of products,  
17 services, and software tools, including DOCUMENTS sufficient to identify each  
18 FIELD of PLAINTIFFS’ DATA collected.

19 **RESPONSE TO REQUEST NO. 10:** TikTok objects to the Request to the extent  
20 the documents sought contain Confidential Information, Privileged Information, or  
21 Private Information. TikTok objects to the Request as overly broad and unduly  
22 burdensome because it seeks documents concerning TikTok’s collection of data  
23 through the “TikTok for Business” suite and thus seeks discovery that is not relevant  
24 to any claims or defenses in the case or proportional to the needs of the case. TikTok  
25 objects to the Request as overly broad and unduly burdensome because there is no  
26 defined temporal scope and thus seeks discovery that is not relevant to any claims or  
27 defenses in this action and proportional to the needs of the case. TikTok objects to  
28 the Request as overly broad and unduly burdensome because it seeks “ALL

1 DOCUMENTS . . .” and thus seeks discovery that is not relevant to any claims or  
2 defenses in the case or proportional to the needs of the case. TikTok objects to the  
3 Request to the extent it seeks information regarding TikTok user data, as this action  
4 is limited to non-TikTok users.

5 Subject to and without waiving any of the foregoing General and Specific  
6 Objections, TikTok is willing to meet and confer to narrow the Request.

7 **REQUEST NO. 11:** ALL DOCUMENTS CONCERNING YOUR collection of  
8 PLAINTIFFS’ DATA through the “TikTok for Developers” suite of software  
9 products, including but not limited to: Login Kit, Share Kit, Content Posting API,  
10 Display API, Research API, Green Screen Kit, and any similar software, code, or  
11 algorithmic programming.

12 **RESPONSE TO REQUEST NO. 11:** TikTok objects to the Request to the extent  
13 the documents sought contain Confidential Information, Privileged Information, or  
14 Private Information. TikTok objects to the Request as overly broad and unduly  
15 burdensome because it seeks documents concerning TikTok’s collection of data  
16 through the “TikTok for Developers” suite and thus seeks discovery that is not  
17 relevant to any claims or defenses in the case or proportional to the needs of the case.  
18 TikTok objects to the Request as overly broad and unduly burdensome because there  
19 is no defined temporal scope and thus seeks discovery that is not relevant to any  
20 claims or defenses in this action and proportional to the needs of the case. TikTok  
21 objects to the Request as overly broad and unduly burdensome because it seeks “ALL  
22 DOCUMENTS . . .” and thus seeks discovery that is not relevant to any claims or  
23 defenses in the case or proportional to the needs of the case. TikTok objects to the  
24 Request to the extent it seeks information regarding TikTok user data, as this action  
25 is limited to non-TikTok users.

26 Subject to and without waiving any of the foregoing General and Specific  
27 Objections, TikTok is willing to meet and confer to narrow the Request.

1 **REQUEST NO. 13:** DOCUMENTS sufficient to IDENTIFY ALL putative CLASS  
2 members, including all electronic or physical address information associated with  
3 putative CLASS members.

4 **RESPONSE TO REQUEST NO. 13:** TikTok objects to the Request to the extent  
5 the documents sought contain Confidential Information, Privileged Information, or  
6 Private Information. TikTok objects to the Request to the extent it seeks information  
7 not within TikTok's possession, custody, or control.

8 Subject to and without waiving any of the foregoing General and Specific  
9 Objections, TikTok will conduct a reasonable search and produce non-privileged  
10 responsive documents, if any exist.

11 **REQUEST NO. 20:** DOCUMENTS sufficient to IDENTIFY ALL of the  
12 PLAINTIFFS' DATA that YOU collected from THIRD PARTY WEBSITES that  
13 use the TIKTOK SDK, including but not limited to, ANY data logs.

14 **RESPONSE TO REQUEST NO. 20:** TikTok objects to the Request to the extent  
15 the documents sought contain Confidential Information, Privileged Information, or  
16 Private Information. TikTok objects to the Request as overly broad and unduly  
17 burdensome because there is no defined temporal scope and thus seeks discovery that  
18 is not relevant to any claims or defenses in this action and proportional to the needs  
19 of the case.

20 Subject to and without waiving any of the foregoing General and Specific  
21 Objections, TikTok will conduct a reasonable search and produce non-privileged  
22 responsive documents, if any exist.

23 **REQUEST NO. 21:** ALL DOCUMENTS CONCERNING ANY collection of  
24 PLAINTIFFS' personally identifiable information in connection with their use of  
25 THIRD PARTY WEBSITES that use the TIKTOK SDK.

26 **RESPONSE TO REQUEST NO. 21:** TikTok objects to the Request to the extent  
27 the documents sought contain Confidential Information, Privileged Information, or  
28 Private Information. TikTok objects to the Request because the phrase "personally



1 identifiable information” is vague and undefined. TikTok objects to the Request as  
2 overly broad and unduly burdensome because it seeks “ALL DOCUMENTS . . .”  
3 and thus seeks discovery that is not relevant to any claims or defenses in the case or  
4 proportional to the needs of the case. TikTok objects to the Request to the extent it  
5 seeks information regarding TikTok user data, as this action is limited to non-TikTok  
6 users. TikTok objects to the extent the Request is duplicative of Request No. 20.  
7 Subject to and without waiving any of the foregoing General and Specific Objections,  
8 TikTok will conduct a reasonable search and produce non-privileged responsive  
9 documents, if any exist.

10 **REQUEST NO. 25:** DOCUMENTS sufficient to IDENTIFY the FIELDS and  
11 categories of information collected by TIKTOK SDK.

12 **RESPONSE TO REQUEST NO. 25:** TikTok objects to the Request to the extent  
13 the documents sought contain Confidential Information, Privileged Information, or  
14 Private Information. TikTok objects to the Request as overly broad and unduly  
15 burdensome because there is no defined temporal scope and thus seeks discovery that  
16 is not relevant to any claims or defenses in this action and proportional to the needs  
17 of the case. TikTok objects to the Request as overly broad and unduly burdensome  
18 because it seeks the fields and categories of information collected without limitation  
19 and thus seeks discovery that is not relevant to any claims or defenses in the case or  
20 proportional to the needs of the case. TikTok objects to the Request to the extent it  
21 seeks information regarding TikTok user data, as this action is limited to non-TikTok  
22 users. TikTok objects to the Request to the extent it seeks information not within  
23 TikTok’s possession, custody, or control.

24 Subject to and without waiving any of the foregoing General and Specific  
25 Objections, TikTok will produce non-privileged documents sufficient to identify the  
26 fields and categories of information that TikTok could receive from a third-party  
27 website’s use of the Pixel or Events API.  
28



## **B. PLAINTIFFS' STATEMENT**

### **1. Factual and Procedural Background**

Plaintiffs allege that Defendants use the TikTok SDK that is or has been installed on at least 500,000 non-TikTok websites to intercept and collect data on unassuming website visitors, including those who have never had a TikTok account. Plaintiffs seek to represent a class of non-TikTok users who have nonetheless had their personal data intercepted by Defendants. This case at its core is about that data on non-TikTok users intercepted through the TikTok SDK. Defendants refuse to produce that data, and documents identifying and describing that data, despite the fact that such data is at the heart of the case.

On June 27, 2023, Plaintiffs sent Defendants a comprehensive set of document requests, including requests 2(c), 7, 8, 10, 11, 13, 20, 21, and 25 seeking (1) documents concerning the data that Defendants are collecting on non-TikTok users through the TikTok SDK (RFP Nos. 7-8 and 10-11, 21), (2) documents sufficient to identify all of the Plaintiffs' data that Defendants collect through the TikTok SDK, including data logs (RFP No. 20) and each field and category of information transmitted through the TikTok SDK (RFP No. 2(c) and 25), and (3) documents sufficient to identify all putative class members (RFP No. 13). In response to seven of these nine requests, Defendants agreed that they would produce non-privileged, responsive documents. To date, they have not produced a single responsive internal, non-public document, including any of the data that they continue to collect on non-TikTok users with the TikTok SDK.

In addition to the RFPs, on August 25, Plaintiffs separately wrote to Defendants to ensure that they are appropriately preserving electronically stored information ("ESI") relevant to this case, including ESI to identify class members, ESI to identify the information Defendants collected from class members, and ESI to identify the ways in which Defendants used the information they collected. Ex. 2. Defendants confirmed, on August 30, that they had *not* been doing so. Specifically,

1 they stated that they regularly delete “data received from third-party websites that  
 2 does *not* pertain to TikTok users.” Ex. 3. Defendants further suggested that for them  
 3 to discontinue that destruction of data, “the parties will need to meet and confer  
 4 regarding appropriate cost-shifting,” between Plaintiffs, five ordinary individuals,  
 5 and ByteDance, a multinational corporation most recently valued at \$223.5 billion.<sup>2</sup>  
 6 *Id.*

7 In order to better understand the scope and implication of Defendants’ ongoing  
 8 destruction of relevant data, on September 6, Plaintiffs requested that Defendants  
 9 provide a sample of non-TikTok user data that Defendants collected, generated, or  
 10 processed on September 11. Ex. 4. Defendants promised that they would do so by  
 11 September 29. Ex. 5. That date has come and long passed with no production from  
 12 Defendants. On October 19, Defendants noted noncommittally that they “are  
 13 working to provide a sample of the types of data that are deleted and will produce it  
 14 as soon as reasonably possible.” Ex. 7. Defendants have not done so.

15 In Defendants’ latest communication on this issue, on October 27, Defendants  
 16 admitted for the first time that there may be private, personally identifiable  
 17 information in the supposedly unmatchable “garbage” data from non-TikTok users  
 18 after all.<sup>3</sup> After insisting for months, *including before the Court*, that the non-TikTok  
 19 user data is of no consequence and used only to provide advertisers with information  
 20 on what percentage of the overall collected data matched to TikTok users,<sup>4</sup>  
 21 Defendants now represented that the production of sample data “requires time”  
 22 because “given Plaintiff’s privacy concerns in this litigation, [they are] taking extra  
 23

24 <sup>2</sup> <https://www.wsj.com/business/tiktok-parent-bytedance-turns-operating-profit-sees-revenue-slow-bb270bc8>.

25 <sup>3</sup> Defendants characterized non-TikTok user data as “garbage data” during the  
 26 October 20 hearing before this Court. Oct. 20 Hrg Tr. at 36:24-25.

27 <sup>4</sup> For instance, during the October 20 hearing before this Court, Defendants  
 28 represented: “[I]n terms of our use of it, yes, we have aggregated reports that will let  
 an advertiser know how many of the people who, let’s say, did something on their  
 website were TikTok users who saw their ad. That’s it. There’s no – ***you can’t even  
 tell anything about non-user data because you don’t know who they are.***” Oct. 20  
 Hrg Tr. at 36:14-19 (emphasis added).

1 steps to ensure we can provide the information *consistent with data sharing*  
 2 *controls.*” Ex. 8 (emphasis added). As of the date of this filing, Defendants still have  
 3 not produced any sample data and have failed to indicate that they have suspended  
 4 the ongoing semi-monthly deletion of the overall data.

## 5 **2. The Data that Defendants Collect on Non-TikTok Users** 6 **Through the TikTok SDK Is Undisputedly Relevant.**

7 This case is about the data that Defendants are collecting on non-TikTok users.  
 8 That data itself—or at least for now a sample of that data—should be produced, as it  
 9 is directly relevant to both class certification and trial. Indeed, that data itself may be  
 10 the best evidence to identify potential class members and what exact information  
 11 Defendants are collecting on class members. Defendants’ latest communication—  
 12 that “given Plaintiff’s privacy concerns in this litigation, [they are] taking extra steps  
 13 to ensure we can provide the information consistent with data sharing controls” (Ex.  
 14 8)—suggests that the non-TikTok user data may indeed contain personally  
 15 identifying information and may identify potential class members. Given the central  
 16 relevance of this data and in an effort to expedite discovery, Plaintiffs requested that  
 17 Defendants produce just a small sample of that data, *i.e.* the non-TikTok user data  
 18 that Defendants receive, generate, and process on just a single day. Defendants have  
 19 failed to do even that, despite their promise to do so.

20 Through RFP 2(c) and 25, Plaintiffs further requested “each field and category  
 21 of information transmitted through the TikTok SDK” and “documents sufficient to  
 22 identify the fields and categories of information collected by TikTok SDK.” And  
 23 through RFP 20, Plaintiffs also requested—and Defendants agreed—that Defendants  
 24 produce documents sufficient to identify all of the Plaintiffs’ data that they collect  
 25 through the TikTok SDK. In response to these requests, Defendants should produce,  
 26 at minimum, all of the data fields and subfields received by TikTok, including  
 27 TikTok’s pre-set fields and subfields and HTTP fields and subfields.<sup>5</sup> Further, to the

28 <sup>5</sup> Defendants objected to Request 2(c) on the ground that websites can create customizable fields and categories while installing the Pixel and “thus it is not

1 extent that data fields and subfields have changed over the course of the class period,  
 2 Defendants should identify what those changes are. These (current and historical)  
 3 data fields are directly relevant because they allow Plaintiffs to identify and  
 4 understand the categories of data that Defendants have collected on non-TikTok users  
 5 through the TikTok SDK.

6 To date, Defendants have produced only a copy of their publicly available  
 7 website on this issue,<sup>6</sup> *see* Ex. 7, but that website is inadequate for several reasons.  
 8 First, that website indicates that the information contained in it is “deprecated,” so it  
 9 is not clear whether Defendants are pointing Plaintiffs to *current* information on the  
 10 data collected. Second, even if they were guiding Plaintiffs to current information,  
 11 this webpage merely lists the standard events that advertisers can add when  
 12 configuring their Pixel and Events API. It does not list every data field and subfield  
 13 that Defendants collect when advertisers add certain standard events, or the fields  
 14 that Defendants collect when advertisers customize their own events. At bottom,  
 15 despite receiving these discovery requests in June, Defendants have produced **zero**  
 16 data that they are collecting on non-TikTok users and **zero** data fields to identify and  
 17 describe the types and categories of data that they are collecting on non-TikTok users.

18 Defendants’ obfuscation is all the more troubling because at the same time that  
 19 Defendants have dragged their heels on producing this data, they have apparently  
 20 been purging that data. In an October 20 hearing before this Court, Defendants stated  
 21 that they are deleting this data every 14 days.<sup>7</sup> Oct 20 Hrg Tr. at 37:5. This means

22  
 23 possible for TikTok to provide each field and category of the information  
 24 transmitted.” Even if that is the case, Defendants should be able to identify at least  
 25 each data field and subfield that is pre-set by TikTok or that constitute standard HTTP  
 26 fields and subfields.

25 <sup>6</sup>[https://ads.tiktok.com/gateway/docs/index?identify\\_key=2b9b4278e47b275f36e7c39a4af4ba067d088e031d5f5fe45d381559ac89ba48&language=ENGLISH&doc\\_id=1727541103358977#item-link-Example](https://ads.tiktok.com/gateway/docs/index?identify_key=2b9b4278e47b275f36e7c39a4af4ba067d088e031d5f5fe45d381559ac89ba48&language=ENGLISH&doc_id=1727541103358977#item-link-Example).

27 <sup>7</sup> There are outstanding questions, however, on what exactly Defendants mean by  
 28 “deleting.” For instance, it is not clear whether Defendants make copies of the data  
 that is initially collected and whether such copies or downstream versions of data are  
 also “deleted” when the initial copy is. Plaintiffs have issued additional document  
 requests and interrogatories to Defendants on this issue.

1 that Defendants have already deleted—and continue to delete—data regarding their  
 2 illegal interception during the pendency of this lawsuit. This failure to preserve  
 3 directly contradicts Defendants’ “duty to preserve what it knows, or reasonably  
 4 should know, is relevant in the action, is reasonably calculated to lead to the  
 5 discovery of admissible evidence, is reasonably likely to be requested during  
 6 discovery, and/or is the subject of a pending discovery request.” *National Assoc. of*  
 7 *Radiation Survivors v. Turnage*, 115 F.R.D. 543, 557-58 (N.D. Cal. 1987). The  
 8 ongoing nature of Defendants’ deletion increases the urgency of Plaintiffs’ request  
 9 that Defendants produce sample data collected, generated, and processed on one day,  
 10 so that Plaintiffs can fully assess the impact of Defendants’ failure to preserve data  
 11 undisputedly relevant to the case.

### 12 **3. Defendants’ Burden Objections Are Meritless.**

13 Defendants argue that they must delete the non-TikTok user data to “avoid the  
 14 enormous cost of storing such an immense amount of data.” Ex. 3. Of course, this  
 15 burden exists only because Defendants have made the decision to continue collecting  
 16 non-TikTok user data even after Plaintiffs filed this lawsuit. Defendants should not  
 17 be permitted to both continue collecting and profiting from that collection and  
 18 simultaneously destroy evidence of that collection and use, particularly where the  
 19 Court has denied most of Defendants’ motion to dismiss. “[D]efendants may not  
 20 attempt to ‘avoid a class suit merely because their own actions have made the class  
 21 more difficult to identify [or locate].’” *Six (6) Mexican Workers v. Arizona Citrus*  
 22 *Growers*, 904 F.2d 1301, 1307 (9th Cir. 1990) (alteration in original). Defendants  
 23 “should not be allowed to prevent class certification due to a record-keeping problem  
 24 of its own making.” *Frlekin v. Apple Inc.*, 309 F.R.D. 518, 526 (N.D. Cal. 2015).

25 Defendants’ burden objections ring even more hollow because Defendants will  
 26 not even produce the non-TikTok user data that they collect on a single day. Indeed,  
 27 in light of Defendants’ complaints about the “immense amount of data” that they  
 28 themselves collect, Plaintiffs requested that Defendants at least provide the data that

1 they are collecting on one day. Despite the fact that Plaintiffs made this request on  
2 September 6, Defendants still have not done so. They blew through their own self-  
3 imposed deadline of September 29 to produce the data, *see* Ex. 5, and since then have  
4 offered only empty words that they “will provide an update as soon as reasonably  
5 possible,” *see* Ex. 8.

6 Plaintiffs’ request for this sample data easily satisfies Rule 26’s proportionality  
7 test. Each relevant factor under the test weighs in Plaintiffs’ favor.

8 The issues at stake are of public importance: This putative class action impacts  
9 the privacy rights of millions of individuals who do not have a TikTok account yet  
10 continue to have their personal data intercepted and collected by TikTok for TikTok’s  
11 benefit. The case likely also will inform the actions of other large data companies  
12 that unlawfully collect information on unassuming Internet users.

13 The amount in controversy in this case is significant: While Plaintiffs have not  
14 yet specifically quantified damages, the putative class includes millions of Internet  
15 users on a nationwide scale. Further, under Plaintiffs’ claim under the California  
16 Invasion of Privacy Act, which survived Defendants’ motion to dismiss, a plaintiff  
17 has additional claims for damages for each separate communication that is  
18 intercepted, and each additional use of data wrongfully taken (or information derived  
19 from such data) is a new harm. *See* Cal. Pen. Code § 631(a). In light of this statutory  
20 damages scheme and the breadth of allegations involved, damages may be at least  
21 several tens of millions of dollars, if not hundreds of millions or more. The cost of  
22 the requested discovery is proportional to the significant amount in controversy. *See*  
23 *Milliner v. Mutual Secs., Inc.*, 2017 WL 6419275, at \*3 (N.D. Cal. Mar. 24, 2017)  
24 (granting motion to compel where amount in controversy was “tens of millions of  
25 dollars”); *SEC v. Chen*, 2016 WL 3598108, at \*5 (C.D. Cal. Feb. 4, 2016) (amount  
26 in controversy potentially exceeding \$32 million was “significant”).

27 Defendants Have Sole Access to the Requested Information: The data that  
28 Defendants collect on non-TikTok users is discovery that is exclusively in



1 Defendants' possession. There is no other source through which Plaintiffs can  
2 acquire that data.

#### 3 **4. Relief Requested**

4 Plaintiffs respectfully request that the Court order Defendants to do the  
5 following: *First*, produce, without alteration, all non-TikTok user data that they  
6 collected, generated, and processed on September 11, 2023 or a date of the Court's  
7 choosing. *Second*, identify all data logs, fields, and subfields received by Defendants  
8 through non-TikTok websites that have the TikTok SDK installed, including  
9 TikTok's pre-set fields and subfields and HTTP fields and subfields. Further, to the  
10 extent that data fields and subfields have changed over the course of the class period,  
11 Defendants should identify what those changes are. *Third*, suspend the deletion of  
12 non-TikTok user data until further notice and at least until Plaintiffs have had a  
13 chance to review the data that Defendants are collecting and assess the impact of its  
14 deletion.

#### 15 **C. DEFENDANTS' STATEMENT**

16 Plaintiff seeks a sample of the unmatched, event-level data that TikTok  
17 receives. Based on their demand for this single document (which Defendants are in  
18 the process of producing), Plaintiffs move to compel on nine different RFPs. But  
19 the data is not responsive to those RFPs.

20 As an initial matter, Plaintiffs' attempt to cast Defendants in a bad light is  
21 intentionally misleading. They claim that the requests date back to June but fail to  
22 mention they were not served until July, or that Defendants' initial response was  
23 not even due until August 10. Plaintiffs did not raise any issues in a meet-and-  
24 confer until August 24. For the last two months, the parties have engaged in  
25 numerous discussions in an effort to resolve these issues. TikTok, as explained  
26 below, has worked hard to get Plaintiffs the information they want, even though it  
27 was not the proper subject of a discovery request.

28 Second, the requests at issue do not even ask for this data. Seven of the RFPs



1 (Request Nos. 2, 7, 8, 10, 11, 21 and 25) seek entirely different categories of  
2 documents, all of which pertain to TikTok’s process of collecting data, and  
3 Plaintiffs make no argument as to why their Motion should be granted as to those  
4 seven. Their attempt to shoehorn these requests into their Motion, without any  
5 argument as to relevance or factual background on those RFPs, should be rejected.  
6 *See Mier v. CVS Health*, 2021 WL 6102518, at \*2 (C.D. Cal. Oct. 12, 2021)  
7 (denying motion to compel because plaintiff failed to carry his “burden of  
8 demonstrating the relevance” of the discovery sought).

9 The remaining two requests seek documents sufficient to identify all putative  
10 class members, and documents sufficient to identify all data collected from putative  
11 class members. The data Plaintiffs seek is not responsive because it cannot be used  
12 to identify any putative class member (or anyone at all) or the data belonging to  
13 those individuals. Defendants explained this to Plaintiffs in September: “When  
14 TikTok receives data from an advertiser via the Pixel, it may attempt to match that  
15 data to a specific user. . . . Without a match to a specific TikTok user, TikTok  
16 simply does not know who that data comes from. Because the email addresses and  
17 phone numbers that TikTok receives via the Pixel are hashed before receipt, TikTok  
18 cannot search for a specific email or phone number.” Park Dec. Ex. 5. The data  
19 would be useless even in determining the size of the class: there is no way to know  
20 whether a website “event” relates to a non-TikTok user or simply does not have  
21 enough information to be matched to the appropriate TikTok user. Declaration of  
22 Zeno Du (“Du Dec.”) ¶ 5.

23 Nor have Defendants conceded that there may be “private, personally  
24 identifiable information” in the data that is purged, as Plaintiffs suggest. The data  
25 controls Defendants referenced pertain to IP addresses and cookie IDs (not email,  
26 phone number, or anything else). *See id.* ¶ 3. IP addresses and cookie IDs do not  
27 themselves identify any specific person. *See In re Nickelodeon Consumer Privacy*  
28 *Litig.*, 827 F. 3d 262, 283 (3d Cir. 2016) (“an IP address or a digital code in a

1 cookie file would likely be of little help in trying to identify an actual person”).  
 2 They are thus unhelpful to Plaintiffs’ goal of identifying putative class members.  
 3 Even if that data cannot be used by itself by to identify any specific person, it may  
 4 still be considered personal information under governing privacy laws because it is  
 5 associated with (but cannot, on its own, identify) an individual. Thus, TikTok must  
 6 maintain significant controls over that data. *See* Du Dec. ¶ 4.

7 Third, and in any event, TikTok has nonetheless agreed to produce the  
 8 snapshot Plaintiffs want. *See* Park Dec. Ex. 8. Plaintiffs’ motion to compel is thus  
 9 moot. *See Burmahan*, 2023 WL 6783288 at \*3; *Mass. Mut. Life Ins.*, 2020 WL  
 10 12016704 at \*1. If Plaintiffs identify any issues with the document, TikTok is  
 11 entitled to an opportunity to confer about the supposed problems. *See* L.R. 37-1  
 12 (requiring parties to confer before the filing of any motion).

13 Fourth, to the extent that Plaintiffs insist that Defendants retain and produce  
 14 all of the data on a going-forward basis, that demand is burdensome—particularly  
 15 in light of the fact that the data is not useful to Plaintiffs. On one recent day,  
 16 TikTok received approximately 3,000 gigabytes of data. *See* Du Dec. ¶ 8. That  
 17 amount is approximately equivalent to 1.8 million webpages or 1.05 billion text  
 18 messages.<sup>8</sup> Storing that data requires corresponding server space. *See id.* Plaintiffs  
 19 argue that “[e]ach relevant factor” under Rule 26’s proportionality test weighs in  
 20 their favor, but they omit several of those factors. Two of the omitted factors are  
 21 “the importance of discovery in resolving the issues” and “whether the burden or  
 22 expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P.  
 23 26(b)(1). The underlying event-level data cannot “resolv[e] the issues” in this  
 24 litigation; it cannot even be used to identify any single purported class member.  
 25 And because it has no likely benefit, the burden of maintaining the data certainly  
 26 outweighs any benefit.

27  
 28 <sup>8</sup> *See* U.S. Mobile, *How Much Data is a Gigabyte*, available at  
<https://www.usmobile.com/blog/how-much-is-a-gigabyte/>.

1 This portion of the Motion should be denied as meritless and moot. *See*  
 2 *Burmayan*, 2023 WL 6783288 at \*3 (C.D. Cal. Aug. 28, 2023); *Mass. Mut. Life Ins.*  
 3 *Co.*, 2020 WL 12016704 at \*1.

4 **V. DOCUMENTS ON CHANGES MADE TO DEFENDANTS' DATA**  
 5 **COLLECTION PRACTICES VIA THE TIKTOK SDK (RFP NO. 38)**

6 **A. DOCUMENT REQUEST AND RESPONSE IN DISPUTE**

7 **REQUEST NO. 38:** ALL DOCUMENTS CONCERNING ANY changes made by  
 8 YOU to YOUR DATA collection practices as it relates to the TIKTOK SDK.

9 **RESPONSE TO REQUEST NO. 38:** TikTok objects to the Request to the extent  
 10 the documents sought contain Confidential Information, Privileged Information, or  
 11 Private Information. TikTok objects to the Request as overly broad and unduly  
 12 burdensome because there is no defined temporal scope and thus seeks discovery that  
 13 is not relevant to any claims or defenses in this action and proportional to the needs  
 14 of the case. TikTok objects to the Request as overly broad and unduly burdensome  
 15 because it seeks "ALL DOCUMENTS . . ." and thus seeks discovery that is not  
 16 relevant to any claims or defenses in the case or proportional to the needs of the case.

17 Subject to and without waiving any of the foregoing General and Specific  
 18 Objections, TikTok is willing to meet and confer to narrow the Request.

19 **B. PLAINTIFFS' STATEMENT**

20 **1. Factual and Procedural Background**

21 This request seeks documents on the ways in which Defendants have changed  
 22 their data collection practices via the TikTok SDK since its initial release. Such  
 23 documents include "release notes," which are technical documentation that  
 24 developers routinely produce with the launch of a software update to detail the  
 25 changes included in the update. Notwithstanding the clear relevance of these  
 26 documents, Defendants lodged boilerplate objections to RFP No. 38 and sought to  
 27 meet and confer. After the parties' conference on August 24, and as memorialized in  
 28 Defendants' own September 6 correspondence, Defendants agreed to "search for  
 release notes or update descriptions regarding the TikTok Pixel and TikTok Events

1 API, as well as related internal software that is used to process non-TikTok user  
2 data.” Ex. 10. That did not happen.

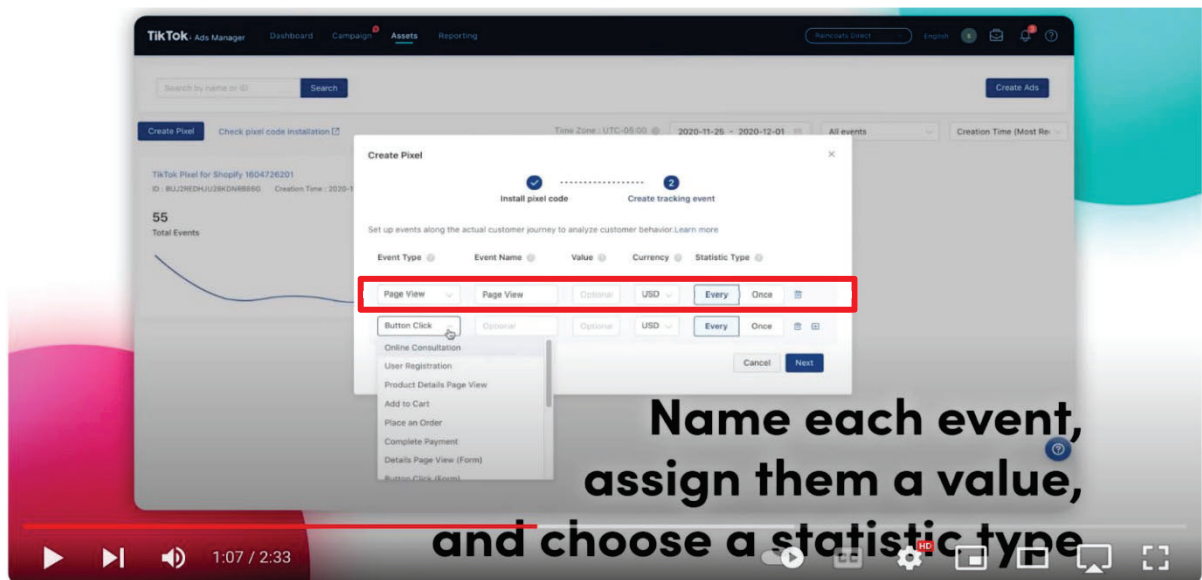
3 On October 13, Plaintiffs requested an update from Defendants on the status  
4 of this production. On October 19, Defendants responded by pointing to three  
5 documents (which are just copies of their publicly available webpages) that they  
6 produced *before* their September 6 agreement to search for relevant documents. In  
7 other words, Defendants *retroactively* sought to designate copies of their publicly  
8 available webpages as the sum total of their responsive production to RFP No. 38.  
9 Ex. 7. Plaintiffs immediately responded by pointing out the incomplete nature of the  
10 three publicly available webpages and asking for the “investigation Defendants have  
11 done since September 6 to search for *internal* documents responsive to this request.”  
12 *Id.* On October 24, Plaintiffs followed up again. Defendants noted that they would  
13 produce “responsive documents” about “Pixel and/or Events API updates” on or  
14 before November 6. Ex. 13. As of the date that Plaintiffs served their portion of this  
15 joint stipulation on Defendants, Defendants had not done so.

16 In sum, Defendants seek to discharge their discovery obligations by pointing  
17 to three publicly available webpages that simply do not provide the information for  
18 which Defendants themselves agreed to search.

19 **2. The Requested Documents Are Relevant to Show How the**  
20 **TikTok Pixel Has Become More Invasive Over Time.**

21 It is undisputed that the TikTok Pixel and Events API have changed since their  
22 first release. Release notes and update descriptions are thus relevant to show what  
23 those changes have been and what changes there have been to the data that  
24 Defendants have collected on non-TikTok users through the TikTok SDK. At least  
25 as to the Pixel, the documents are all the more relevant because Plaintiffs’  
26 investigation suggests that Defendants have designed the Pixel to become more  
27 invasive over time.  
28

For example, the TikTok Pixel is designed by default to track any “PageView event,” which measures when any person lands on any webpage of the website that has installed the Pixel.<sup>9</sup> Under the most current version of the Pixel, there is no way for the website to remove or deselect the tracking of these PageView events. However, and as alleged in the FAC, earlier iterations of the Pixel around 2021 also pre-configured the Pixel with the default PageView event but appear to have given websites the option to deselect it:



For instance, in 2021, TikTok published a tutorial on how to set up the TikTok Pixel. That YouTube video shows a small trash can icon next to PageView, which indicates that the website may have had the option to click on that icon to remove PageView.<sup>10</sup> That Defendants have made the collection of PageView events a nonnegotiable baseline is further significant because of the data fields that are collected when the Pixel is configured to include PageView. These data fields include personally identifying ones like user agent, the full-string URL of the webpage that the visitor is viewing, referrer URL (which is the previously visited webpage), and user language.

<sup>9</sup> <https://ads.tiktok.com/help/article/standard-events-parameters?lang=en> (“By default, the pixel base code will always include page view events which measure when a person lands on any of your webpages.”).

<sup>10</sup> <https://www.youtube.com/watch?v=4jAJ0sVvGs>.

1 This is just one example—which Plaintiffs have uncovered through public  
2 investigation—of how Defendants have not only changed the Pixel over time but also  
3 have made it more invasive of private data by decreasing the non-TikTok websites’  
4 autonomy to configure the Pixel as they see fit. Plaintiffs have more than met their  
5 burden to show the relevance of the documents sought, and the Court should order  
6 Defendants to produce all documents responsive to RFP No. 38 immediately.

7 The three publicly available webpages that Defendants have produced are  
8 woefully deficient and hardly discharge their obligations to produce responsive  
9 documents. The first is titled “Pixel Release Notes.”<sup>11</sup> While this page appears to  
10 feature *some* information on the changes that Defendants have made to the Pixel, it  
11 is incomplete, as evinced by the fact that it does not disclose the changes that  
12 Defendants have made to prevent non-TikTok websites from removing or deselecting  
13 the default PageView event as explained above. The second webpage is titled  
14 “Changelog” and shows the dates on which Events API 1.0 and Events API 2.0 were  
15 introduced and includes just one sentence on one difference between the two  
16 versions.<sup>12</sup> Finally, the third webpage is titled “What’s New” and features short  
17 descriptions of changes made across numerous products in the TikTok for Business  
18 suite of products.<sup>13</sup> Even setting aside the extremely short descriptions of updates,  
19 this webpage is incomplete and insufficient to fulfill Defendants’ obligations as to  
20 RFP 38 because it goes back only to August 2022, even though Defendants released  
21 the Pixel in 2020. Finally, Defendants agreed to search for release notes and update  
22 descriptions not only about the Pixel and Events API but also “related internal  
23 software that is used to process non-TikTok user data.” The three publicly available  
24 webpages feature no information at all on the internal software.

25 Defendants have continually made updates to the Pixel and Events API,  
26 including making it more invasive of private data. Documents identifying and

27 <sup>11</sup> <https://ads.tiktok.com/help/article/pixel-release-notes?lang=en>.

28 <sup>12</sup> <https://business-api.tiktok.com/portal/docs?id=1771101231937537>.

<sup>13</sup> <https://business-api.tiktok.com/portal/docs?id=1740029165513730&rid=gm7ye53gj793>.



1 describing these changes—including release notes, update descriptions, product  
2 design documents, launch documents, and other such documents that describe in  
3 detail the changes and how those changes are implemented—are indisputably  
4 relevant. Defendants have already stated that they would search for such documents.  
5 Having agreed to do so, Defendants should be required to search their files for and  
6 produce relevant documents.

### 7                   **3. The Discovery Sought Is Proportional to the Needs of the** 8                   **Case.**

9           All of the factors discussed above with regard to the proportionality of the  
10 discovery request apply here. *See supra* at Sec. IV.B.3. The issues at stake in this  
11 case are important, the amount in controversy is significant, and Defendants have  
12 exclusive access to documents on the changes that they themselves made to their data  
13 collection practices via the TikTok SDK.

### 14                   **C. DEFENDANTS' STATEMENT**

15           Plaintiffs asked for documents concerning changes to the tools at issue, and  
16 agreed during the meet-and-confer process that this request could be satisfied by go-  
17 get documents (rather than a comprehensive keyword search) consisting of release  
18 notes and update descriptions. Park Dec. Ex. 9 at 4. Defendants have never agreed  
19 to produce “all” documents on this topic, nor would such a request be appropriately  
20 tailored. Defendants produced the best documents they could find on this topic,  
21 which happen to be publicly available. That does not make them any less responsive.  
22 Plaintiffs assert they are looking for “release notes.” Defendants produced a  
23 document entitled Pixel Release Notes, a portion of which is below<sup>14</sup>:

24  
25  
26  
27  
28  

---

<sup>14</sup> *See* Declaration of Sophia M. Mancall-Bitel (“Mancall-Bitel Dec.”) Ex.1.



## Pixel Release Notes

### August 29, 2023

TikTok is introducing a new front-end user experience in Events Manager to encourage best practices when creating a Pixel and/or setting up web events. The goal of the new flow is to provide an educational and user friendly design to encourage you to setup the key events and parameters needed to achieve success. To learn more about the new flow, see our [Get Started with Pixel](#) page.

### July 6, 2023

#### Enhance Data Postback with the TikTok Pixel

TikTok is improving the functionality of pixels by collecting and using landing page information such as metadata and button clicks. This new information will, in the future, enable TikTok to provide recommendations on how to enhance your pixel event setup and even offer automated solutions. This data may also be used to personalize ad campaigns for people on TikTok and improve TikTok's ad delivery systems. [Learn more about Enhance Data Postback.](#)

## Changelog

The latest Events API version is: **v2.0**

### Available Events API Versions

The table below lists the specific deprecation dates for each version of Events API.

To learn about the changelog for Marketing API versions, refer to [Timelines](#).

Version	Date introduced	Available until	Supported by Marketing API versions	Versioned changes
Events API 2.0	July 18, 2023	TBD	v1.3	Compared with the six Events API 1.0 endpoints ( <a href="#">/pixel/track/</a> , <a href="#">/pixel/batch/</a> , <a href="#">/offline/track/</a> , <a href="#">/offline/batch/</a> , <a href="#">/app/track/</a> , and <a href="#">/app/batch/</a> ), the Events API 2.0 endpoint <a href="#">/event/track/</a> provides a unified API schema for reporting events from all sources, including web, app, and offline, helping advertisers simplify and streamline their integration.
Events API 1.0	August 15, 2022	H2 2024	v1.3 & v1.2	/

Similarly, with respect to Events API (a tool that is not even covered by Plaintiffs' complaint), Defendants produced an Events API Changelog identifying the two versions of Events API that have existed since the tool was introduced (the last of which was only introduced on July 18) and describing the changes made<sup>15</sup>:

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Plaintiffs speculate that these documents are incomplete, but they can of course ask follow-up questions about the documents, including whether any updates are not reflected, during depositions.

Nevertheless, given Plaintiffs' demand that TikTok search for internal documents, TikTok has done so. On October 27, Defendants informed Plaintiffs that they would produce on November 6 internal documents reflecting updates to the software at issue. *See* Ex. 13. Plaintiffs admit this but note that as of the date they

<sup>15</sup> *See* Mancall-Bitel Dec. Ex. 2.

1 served their portion of this Stipulation, Defendants had not produced the documents.  
 2 Of course not: Plaintiffs served their draft on November 1.

3 This portion of the Motion should be denied as moot.<sup>16</sup> *Burmayan*, 2023 WL  
 4 6783288 at \*3 (C.D. Cal. Aug. 28, 2023); *Mass. Mut. Life Ins. Co.*, 2020 WL  
 5 12016704 at \*1.

## 6 **VI. HISTORICAL PIXEL SETTINGS FOR WEBSITES ENUMERATED** 7 **IN FIRST AMENDED COMPLAINT (RFP NO. 37)**

### 8 **A. DOCUMENT REQUEST AND RESPONSE IN DISPUTE**

9 **REQUEST NO. 37:** ALL DOCUMENTS CONCERNING ANY efforts by THIRD  
 10 PARTY WEBSITES to limit YOUR collection of PLAINTIFFS' DATA, including  
 11 but not limited to, the actual, potential, or anticipated impact on YOU.

12 **RESPONSE TO REQUEST NO. 37:** TikTok objects to the Request to the extent  
 13 the documents sought contain Confidential Information, Privileged Information, or  
 14 Private Information. TikTok objects to the Request because the phrase "ANY efforts"  
 15 is vague. TikTok objects to the Request as overly broad and unduly burdensome  
 16 because there is no defined temporal scope and thus seeks discovery that is not  
 17 relevant to any claims or defenses in this action and proportional to the needs of the  
 18 case. TikTok objects to the Request as overly broad and unduly burdensome because  
 19 it seeks "ALL DOCUMENTS . . ." and thus seeks discovery that is not relevant to  
 20 any claims or defenses in the case or proportional to the needs of the case.

21 Subject to and without waiving any of the foregoing General and Specific  
 22 Objections, TikTok is willing to meet and confer to narrow and ascertain the meaning  
 23 of the Request.

### 24 **B. PLAINTIFFS' STATEMENT**

#### 25 **1. Factual and Procedural Background**

26 Request No. 37 seeks documents on efforts by non-TikTok websites that

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27 <sup>16</sup> Defendants do not address Plaintiffs' speculation about changes to the software  
 28 herein because it is irrelevant. This should not be construed as an admission as to the  
 accuracy of that speculation.

1 installed the Pixel and/or Events API to limit the amount of non-TikTok user data  
 2 collected through those trackers. As a starting point for such documents, during the  
 3 parties' August 24 conference, the parties agreed that Defendants should first  
 4 investigate the feasibility of compiling which data collection settings these non-  
 5 TikTok websites agreed to and when. Ex. 9. After Plaintiffs continued to follow up  
 6 for this information, *see* Ex. 11, Defendants provided an update on September 28 that  
 7 they had thus far identified "only one way to find historical Pixel settings, but it is  
 8 highly burdensome, as it requires an individual Pixel-by-Pixel review which would  
 9 number in the thousands at least." Ex. 12. Defendants then added that they "are  
 10 inquiring as to whether there is a single-source location for this information." *Id.*

11 Another month (and numerous follow-ups from Plaintiffs) passed before  
 12 Defendants provided another update that they "have not been able to identify any  
 13 single-source location for historical Pixel settings across advertisers." Ex. 7. In light  
 14 of Defendants' stated burden concerns, during an October 23 conference between the  
 15 parties, Plaintiffs asked whether Defendants would produce historical Pixel settings  
 16 for a prioritized set of 50 or 100 non-TikTok websites compiled by Plaintiffs.  
 17 Defendants countered that they would consider doing so just for the 18 non-TikTok  
 18 websites expressly identified in the FAC.<sup>17</sup> Ex. 13. On October 27, Plaintiffs  
 19 followed up for confirmation that Defendants would agree to their own suggestion of  
 20 producing historical Pixel settings just for the FAC-identified websites. *Id.* To date,  
 21 Defendants have failed to respond.

## 22 **2. The documents sought are relevant and proportional to the** 23 **needs of the case.**

24 The historical Pixel settings are relevant for the same reason that the release  
 25 notes and update descriptions (sought above in Section V) are relevant: They allow

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26 <sup>17</sup> Those 18 websites are Girl Scouts, WebMD, Rite Aid, Recovery Centers of  
 27 America, Cerebral, The Vitamin Shoppe, Weight Watchers, Planned Parenthood  
 28 Federation of America, SmartAsset, Happy Money, United Methodist Church,  
 COVID-19 information page of the Maryland Department of Health, Arizona  
 Department of Economic Security, Hulu, Etsy, Build-a-Bear Workshop, Upwork,  
 and Feeding America.

1 Plaintiffs to investigate how the TikTok Pixel has changed over time and what  
2 changes there have been to the data that Defendants have intercepted and collected  
3 from non-TikTok users through the Pixel. As noted above, Plaintiffs' public  
4 investigation suggests that Defendants likely made the Pixel more invasive of  
5 private data over time by taking away the option for non-TikTok websites to remove  
6 or deselect the tracking of the PageView event. The historical Pixel settings of  
7 specific non-TikTok websites further allow Plaintiffs to investigate these changes.

8 In response to Defendants' stated burden objections, Plaintiffs have already  
9 significantly compromised to initially seek the historical Pixel settings of only those  
10 non-TikTok websites referenced in the FAC. That constitutes only 18 websites out  
11 of the over 500,000 that have or had the Pixel installed. While the Court has not  
12 bifurcated individual and class discovery in this case, Defendants cannot even object  
13 to this request as prematurely seeking class discovery because, at least for now,  
14 Plaintiffs seek historical Pixel settings for only those websites that are expressly  
15 identified in the FAC.

16 Finally, Defendants are the most appropriate, if not the sole, party from which  
17 Plaintiffs can obtain this information. Defendants in the past have told Plaintiffs that  
18 Plaintiffs can investigate the non-TikTok websites that have the Pixel installed by  
19 visiting every website on the Internet and studying each of its public code. Here,  
20 Defendants cannot even make such a flippant suggestion because the public code  
21 would not reveal the Pixel settings that the non-TikTok website had *previously* or  
22 *historically* adopted. Further, while Defendants may insist that Plaintiffs should seek  
23 this information by issuing 18 different third-party subpoenas, it is unclear whether  
24 these websites themselves would have this historical data. And even if these websites  
25 did have such data, the cost of TikTok, a single party, producing the information is  
26 much lower than Plaintiffs having to subpoena 18 different third parties, negotiating  
27 with them, and having each of those 18 separate entities investigate their systems and  
28 documents to see if they have this information. The Court should order Defendants

1 to immediately produce the historical Pixel settings.

2 **C. DEFENDANTS' STATEMENT**

3 The lone request Plaintiffs identify does not call for the category of documents  
4 they seek: historical Pixel settings for the 18 websites identified in the First Amended  
5 Complaint. Defendants' attempts to cooperate with Plaintiffs to provide potentially  
6 relevant information during discovery should not be confused with an admission that  
7 the documents Plaintiffs seek are responsive to Request No. 37. Defendants did not  
8 agree, in their R&Os, to produce documents in response to Request No. 37. In fact,  
9 as their response demonstrates, they did not even understand the meaning of Request  
10 No. 37. That is because, as Plaintiffs allege in their complaint, it is the websites  
11 themselves who choose to install the Pixel and configure it to collect the data they  
12 want. *See* ECF No. 63 ¶¶ 45 (websites install the Pixel), 52 (websites configure the  
13 Pixel to choose the events, or website actions, they want to collect). Thus, if websites  
14 want to "limit" collection of data through the Pixel, they will simply uninstall it or  
15 reconfigure it to collect less data. Defendants explained this on the parties' August  
16 24 conference. If any documents did exist about efforts by individual websites to  
17 "limit" the collection of data through the Pixel, it would be the websites—not  
18 TikTok—who would have those documents. Defendants' attempt to work with  
19 Plaintiffs to identify what else might be relevant does not absolve Plaintiffs of their  
20 obligation to seek documents through the means permitted under Rule 34.

21 Plaintiffs know that Request No. 37 does not cover Pixel settings, because they  
22 propounded a new request seeking exactly these documents. *See* Mancall-Bitel Dec.  
23 Ex. 3. Plaintiffs do not even acknowledge that request in their Motion, despite having  
24 served it the day before they served their portion of this Stipulation. *See* Mancall-  
25 Bitel Dec. Ex. 4. TikTok is working to identify responsive documents for the new  
26 request, but its response to this request is not due until November 30, *see* Fed. R. Civ.  
27 P. 34(b)(2)(A), and it requires that time to investigate and collect relevant documents.

28

1 Plaintiffs' Motion on this topic is meritless and premature, so it should be  
2 denied. *See Garces*, 2021 WL 978540 at \*1.

3 Dated: November 9, 2023

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